IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 44 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF WEALTH-TAX

Versus

D.S VIRAWALA SURAGWALA

Appearance:

1. WEALTH TAX REFERENCE No. 44 of 1995

MR TANVISH U BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 18/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for our opinion in respect of assessment year 1984-85:-

"Whether the Appellate Tribunal is right in law and on facts in directing the A.O. to allow the assessee's claim u/s.5(1)(iii) in respect of the new construction in place of the old palace?"

2. We have heard Mr Tanvish Bhatt, learned counsel for the applicant- revenue. Though served, none appears for the respondent- assessee.

3. The palace which was notified by the Government was demolished and it lost its identity. The value of the new building constructed had been shown by the assessee at Rs.1,57,280/- and the same had been claimed to exempt under sec.5(1)(iii), in addition to the exemption claimed in respect of assessee's flat at Bombay u/s.5(1)(iv) of the Act. The A.O. did not consider the newly constructed building as a palace eligible for exemption u/s.5(i)(iii). He therefore rejected the claim of the assessee for exemption u/s.5(1)(iii). The Dy. CWT(A) however allowed the assessee's claim. The Tribunal relying on its decision dated 6-2-1990 in assessee's own case in WTA No.47/Ahd/89 confirmed the order made by the Dy.CWT (A). A similar question was referred in the assessee's case for the A.Ys. 1981-82 and 1982-83 being Wealth-tax Reference NO.16 of 1987.

4. The aforesaid WTR No.16 of 1987 has been recently decided by another Division Bench of this Court on 17-4-2002. After considering all the relevant statutory provisions and the relevant decisions of the Apex Court, this Court held that the exemption under section 5(1)(iii) of the Wealth-tax Act, 1957 was admissible even in respect of the new building constructed by the assessee in place of the old recognized palace which was used as his official residence. The questions referred in the said reference were answered in the affirmative i.e. in favour of the assessee and against the revenue.

Following the aforesaid decision, we answer the question referred for our opinion in this reference also in the affirmative i.e. in favour of the assessee and against the revenue.

5. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-